

OPINION
66-263

August 19, 1966 (OPINION)

Mr. A. C. Bakken

State's Attorney

Griggs County

RE: Taxation - Exemptions - Disabled Veterans

This is in reply to your letter with regard to tax exemptions of unremarried widows of deceased veterans.

You inform us that the lady's husband was declared totally disabled because of blindness almost thirty years prior to his death last year. His disability was never determined to be service connected. You inform us that this lady and her deceased husband received both real and personal property tax exemptions pursuant to section 57-02-08(21)(22) prior to his death. It is your opinion that the exemptions afforded by Subsections 21 and 22 are not applicable after the death of the blind person. On such basis you state you would appreciate our opinion as to whether or not the exemption provided in said Subsection 20 is applicable to the homestead used and owned by the surviving wife.

Subsection 20 of section 57-02-08 of the 1965 Supplement of the North Dakota Century Code provides:

PROPERTY EXEMPT FROM TAXATION. All property described in this section to the extent herein limited shall be exempt from taxation, that is to say: * * *

20. Fixtures, buildings and improvements upon lots in any city or village up to a net assessed valuation of ten thousand dollars for paraplegic disabled veterans, and four thousand dollars or in the alternative personal property up to an assessed valuation of four thousand dollars, used and owned as a homestead, as defined in section 47-18-01, by any other disabled veteran who was discharged under honorable conditions or who has been retired from the armed forces of the United States with a service connected disability greater than fifty percent, or his unremarried widow if such veteran is deceased, provided, however, that such veteran and his wife, or if such veteran is deceased his unremarried widow, do not earn more than three thousand dollars net income exclusive of any pension for service connected disability from the United States government during the calendar year for which such exemption is claimed, and who shall have a certificate from the United States veterans administration, or its successors, certifying the amount of his disability. To obtain such exemption, an affidavit accompanied by such certificate, showing the facts herein required and a description of the property, shall be filed with the county auditor. Such

affidavit and accompanying certificate shall be opened to public inspection. The board of county commissioners is hereby authorized to cancel the unpaid taxes for any year in which such veteran shall have held title to such exempt property; * * *

The statutory provision as it now appears seems to give an exemption to the paraplegic disabled veteran without any further qualification. It also appears that the statute gives an exemption to the surviving unmarried widow, providing she meets the other qualification as to income.

As to the question at hand, we observe that the statute, prior to the 1965 amendment, provided that disabled veterans who were discharged under honorable conditions with a service connected disability could qualify for the exemption if they met the other requirements. The 1965 Legislature inserted another class who could qualify for such exemption, namely a person "who has been retired from the armed forces of the United States." The phrase, "with a service connected disability greater than fifty percent", seems to qualify both the phrases "any other disabled veteran" and a person "who has been retired from the armed forces of the United States."

We are aware that the language in itself is not too clear and that by strict grammatical construction other results might be obtained. However, in this connection we wish to state a rule of law in 82 C.J.S. STATUTES, Section 334, Page 672, which is given as an aid to construction and states as follows:

Generally, a comma should precede a conjunction connecting two coordinate classes or phrases in a statute in order to prevent the following qualifying phrases from modifying the clause preceding the conjunction."

The statute does not have a comma before the "or" which connects the phrase "disabled veterans who were discharged under honorable conditions" and the phrase "who has been retired from the armed forces of the United States." The term "or", while normally considered to be disjunctive, can also be considered as a conjunction, depending on the context in which it is found. In this instance we do not believe that it was used in its true disjunctive sense. Frequently the word "or" is interchangeable with the word "and." Considering the entire effect of treating the term "or" as a disjunctive, we do not believe that the Legislature intended such a conclusion because, if such meaning were given to the term "or", and if it were deemed that the qualifying phrase "with a service connected disability greater than fifty percent" would not apply to a disabled veteran, it would require a further determination as to what percentage, if any, a veteran must be disabled before he could qualify for the exemption. Taking into consideration the provisions of the act prior to the 1965 amendment, we conclude that the Legislature intended the phrase "with a service connected disability greater than fifty percent" to modify both the antecedent phrases.

It is therefore our opinion that before a veteran or a retired person from military service can qualify for the exemption, he must have a service connected disability of fifty percent or greater. If the

veteran met these qualifications, the exemption that would be afforded to him would be available to his surviving unremarried widow, if she meets the qualifications as to income.

From your letter, it appears that the disability of the veteran has not been determined to be service connected. If it is, in fact, service connected and if this can be established, the surviving widow could still qualify for such exemption.

We are enclosing herewith a Thermofax copy of the opinion which we believe is the one referred to in the newspaper clipping you submitted.

HELGI JOHANNESON

Attorney General